

No. 81230-6

ALEXANDER, C.J. (dissenting)—I concur in the result that Justice Sanders would have us reach, but for slightly different reasons. I agree entirely with his conclusion that it was error to exclude testimony that Dion Walls had not reoffended. As for the testimony of Dr. Leslie Rawlings, I agree with Justice Sanders that there was reversible error, but not because the testimony was irrelevant and prejudicial. In my view, the judge, in contravention of article IV, section 16 of the Washington Constitution, impermissibly commented on the evidence by stating to the jury that Bryan Duncan “did not wish” to be reevaluated. Verbatim Report of Proceedings (Nov. 9, 2005) at 1921. It was that statement, more than the testimony of Dr. Rawlings, that had the capacity to convey to the jury that Duncan was an “obstructionist.” Dissent (Sanders, J.) at 2.

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AUTHOR:

Chief Justice Gerry L. Alexander

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WE CONCUR:

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